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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,108	10/25/2000	Robert S. Morley	91436-213	1598

33000 7590 02/23/2004

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EXAMINER
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NGUYEN, THANH T

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 02/23/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/695,108

Applicant(s)

MORLEY ET AL.

Examiner

Tammy T Nguyen

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (1) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-44 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



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## DETAILED ACTION

### Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-38 and 44, drawn to a method of providing device control to at least one device component, device control enabling interaction of a data network service with at least one device component, classified in **class 709, subclass 223**.
  - II. Claims 39-43, drawn to a method of sending a message from a device component to a server of data network service, classified in **class 709, subclass 207**.

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as method of providing device control to at least one device component, device control enabling interaction of a data network service with at least one device component, classified in a *different Class/Subclass*. And invention II has separate utility such as a method of sending a message from a device component to a server of data network service, classified in a *different Class/Subclass*. See MPEP § 806.05(d).

3. The inventions are distinct, each from the other because of the following reasons:

(a) These invention have acquired a separate status in the art as shown by their different classifications.

(b) The search required for each Group is different and not co-extensive for examination purposes.

For example, the searches for the three inventions would not be co-extensive because these Groups would require different searches on PTO's classification class and subclass as following:

The Group I search (claims 1-38, and 44) would require use of search **Class 709, subclass 223** (not require for invention II).

The Group II search (claims 39-43) would require use of search **Class 709, subclass 207** (not require for the invention I).

For the reasons given above restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

5. During a telephone conversation with Applicants' Representative, Robert D. McCutcheon (Reg. No. 38, 717), on February 17, 2004 a provisional election was not successful. See 37 CFR 1.142(b), as being drawn to a non-elected invention and MPEP § 821.03. A

6. Applicant is reminded that upon the cancellation of claims to a non-elected

invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. Applicant is reminded that the required for response to this requirement is 30 days, not one month.


***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiries concerning this communication or earlier communications from the examiner should be directed to **Tammy T. Nguyen** who may be reached via telephone at **(703) 305-7982**. The examiner can normally be reached Monday through Friday between 8:00 a.m. and 4:30 p.m. eastern standard time.

If you need to send the Examiner, a facsimile transmission regarding this instant application, please send it to **(703) 872-9306**. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, **David Wiley**, may be reached at **(703) 308-5221**.

*TTN*  
February 17, 2004

  
**DAVID WILEY**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100